



Request for Commission Action

- Please fill out each field on this form completely. Incomplete requests will not be accepted.
- Please obtain all signatures except Clerk & Recorder before submitting.
- Please ensure your request is appropriately reviewed before submitting to the Commissioners for action.
- Please ensure appropriate staff attends the Commissioners' administrative meeting or provide for other arrangements.
- To the extent possible, please ensure all contracts conform to the approved county contract template.
- If your contract does not conform, in whole or in part, you must submit the contract for legal review. Please specify which contract sections differ from the county contract template in the space provided below. Risk management review is required when insurance stipulations do not conform with the contract template.

Requestor Information

Submitted by/Dept: Health Department - Peter Nielsen
 Date Submitted: 02/12/16
 Reviewed by/Dept: Ellen Leahy
 E-mail: pnielsen@co.missoula.mt.us
 Phone: Nielsen - Ext. 4968

Legal Review Required?

☒ Yes ☐ No

Reviewed By: Erica Grinde

HR Review Required?

(Independent Contractor Agreements Only)

☒ Yes ☐ No

Reviewed By:

Risk Management Review Required?

☒ Yes ☐ No

Reviewed By: Hal Luttschwager / Shelly Black

Action Information

Date Required: 02/16/16
 Action/Motion Requested: Approve and sign contract with River Design Group for Smurfit-Stone Remedial Investigation Comments - dike stability

Project/Item: Smurfit Stone site dike stability comments

Parties Involved: Health Dept. Water Quality District and River Design Group

Fiscal Impact: Approximately \$4,000 - \$5,000 FY 16

Budget Action Required? No

Project Location: Missoula County

Project Begin: 02/16/16

Project End: 12/31/16

Internal Use Only

Handled By:	Journal:	Date:

☒ BCC Approved

BCC Notes:

☐ Chair Authorized to Sign

Chair: Nicole Rowley
 Commissioner: Jean Curtiss
 Commissioner: Stacy Rye
 Action Date: 2-17-16

Please describe the action requested in detail:

The contract provides consultation regarding the stability of dikes at the former Smurfit-Stone mill site. Contractor will provide written comments to be submitted to the U.S. EPA and Montana DEQ and Montana Natural Resource Damage Program. Contractor will identify and recommend issues related to dike stability to be addressed in the remedial investigation. Initial comments will be provided by mid-March, 2016. Issues to be identified may include geomorphic characteristics of the river, stream channel migration, floodplain constriction, assessment of dike construction and repair history, and recommended requirements for dike inspection and structural stability analysis. Subsequent work may include review of initial investigation results, evaluation of floodplain, impacts of constricted floodway, flood storage lost as a result of floodway constriction, ongoing inspection and maintenance needs, interim repairs needed, environmental risks associated with the dikes, and opportunities for restoration.

MISSOULA COUNTY PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into by and between Missoula County, hereinafter referred to as "the County", and River Design Group, hereinafter referred to as "Contractor", identified as follows:

Organization Name: River Design Group
Organization Type: Corporation
Principal Contact: Matt Daniels

Mailing Address: 236 Wisconsin Avenue, Whitefish, MT 59937

Telephone Number: (406) 862-4927

E-mail Address of Principal Contact: mdaniels@riverdesigngroup.net

Contractor will provide either a Social Security Number or an Employer Identification Number on IRS Form W-9 as provided by law.

1. Purpose

The purpose of this agreement is to provide consultation regarding river restoration, dike stability and related subjects at the former Smurfit-Stone mill site in Missoula County. The County desires to enter into a professional services agreement with Contractor for services desired, in return for the compensation stated. To this end, the parties mutually agree as follows.

2. Relationship of the Parties

Missoula County is a political subdivision of the State of Montana. Contractor is a Montana Corporation.

This Agreement is not intended to constitute or create a joint venture, partnership or formal business organization of any kind whatsoever among and between the parties, and their respective rights and obligations will be only those expressly set forth herein. Neither party will have any authority to bind the other except to the extent authorized herein.

Each party will furnish to the other such cooperation and assistance as may be reasonably required and specified hereunder. However, at all times, each party shall remain an independent contractor with respect to the other. Employees and agents of each party will not be deemed to be employees or agents of the other party. Contractor will perform or provide its services free from the supervision, direction or control of the County, except that Contractor and County will adhere to all provisions of the Site Safety Plan for the event.

The Contractor is required to comply with the provisions of the Montana Worker's Compensation Act and shall provide proof of compliance as provided in Paragraph 8.

3. Required Work or Product

The Contractor shall provide the specific services, tasks, or work products shown on the attached Exhibit A, which lists the scope of services relating to this Agreement. By this reference, Exhibit A is made a part of the Agreement.

4. Performance Schedule and County Assistance

Contractor shall commence performance of services identified in Exhibit A of this Agreement on the 15th day of February, 2016 and shall complete performance of this Agreement by the 31st day of December, 2016.

The County may, by written change order, request changes within the general scope of this Agreement in the schedule, specifications, or quantity of work to be performed hereunder, and Contractor shall be entitled to a reasonable period of time to perform or provide said changes. Additional fees will be charged to the County for such changes as set out in Exhibit A.

County's Responsibilities - The County shall be responsible for assisting with the performance of this Agreement by doing or providing the following:

- a. Providing documents, permit records, aerial photos and other electronic files for use by Contractor in its work.

5. Place where service will be rendered

Contractor will perform most services in accordance with this Agreement at a location of Contractor's discretion. In addition, Contractor will perform services via the telephone, electronic mail, or at such other places as necessary to perform these services in accordance with this Agreement.

6. Compensation for Services

The total compensation to be paid in response to appropriate written request for payment for service under this agreement shall not exceed the unit costs listed below, and payment thereof shall be made at the times, in the amounts and to the parties hereinafter specified: The total compensation to be paid in response to appropriate written request for payment for service shall be:

- a. Engineering Services \$110 per hour

Invoices must be submitted to the Principal Contact for the County identified in Paragraph 10 of this Agreement with complete supporting documentation.

7. Other Payments

Not applicable.

Other payments shall be made at the times, in the amounts, for the purposes, and to the following parties: not applicable

8. Insurance and Workers' Compensation

Contractor will be required to maintain general liability insurance in the amount of one million dollars (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate. Contractor will not be required to provide professional liability insurance.

Contractor shall purchase and maintain automobile occurrence coverage with combined single limits for bodily injury, personal injury and property damage of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor and its employees, agents, representatives, assigns or subcontractors.

In accordance with §§ 39-71-120, 39-71-401 and 39-71-405 MCA, Contractor agrees to provide workers' compensation insurance for its employees while performing work under this Agreement. Contractor shall provide proof of compliance in the form of workers' compensation insurance or documentation of corporate officer status and maintain such insurance or corporate officer status for the duration of the contract.

All insurance policies required must be from an insurance carrier licensed to do business in the State of Montana. Contractor agrees to furnish proof of required insurance to the County prior to commencing work under Agreement. County must be listed as an additional insured on the general liability insurance certificate for this Agreement unless otherwise specified by the County.

9 Records

Contractor shall maintain sufficient records incident to the performance of this Agreement to enable the County to document the performance of the Agreement. Contractor shall allow access to those records by the County and the County Auditor, any independent auditor employed by the County and to representatives of the state or federal government. Records shall be retained for at least three years after completion of the Agreement.

10. Principal Contact for the County

The County official with whom the Contractor must communicate regarding this Agreement and who shall have the authority to accept completion of performance and to submit requests for payment to the County Auditor and Commissioners is:

Name: Peter Nielsen

Title: Environmental Health Supervisor

Address: 301 W. Alder. Missoula MT 59802

Telephone Number: (406)-258-4968; (406) 239-0663 (cell)

Email Address: pnielsen@co.missoula.mt.us

11. Ownership and Publication of Materials

All reports, information, data, and other materials prepared by Contractor pursuant to this Agreement are the property of the County, which has the exclusive and unrestricted authority to release, publish, or otherwise use, in whole or in part, information relating thereto. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the County.

12. Public Access to Information

Contractor acknowledges that the County is a local government unit and its records are public and subject to disclosure under Montana law. Certain information may be protected from disclosure. Protected information includes information concerning an individual privacy interest, legitimate trade secrets and other constitutionally protected proprietary information and certain information relating to individual or public safety. The parties agree to confer prior to disclosure of information relating to this Agreement and its performance which may include protected information.

13. Termination

This Agreement may be terminated at any time by either party by mutual written and signed consent of both parties.

If the Agreement is terminated prior to completion, County shall be responsible for paying Contractor for completed and accepted work and billed to the County as provided in Paragraphs 6 and 7 within thirty (30) days of termination.

14. Failure to Perform

Upon any material default or substantial failure to perform this Agreement by either party, the other party shall be entitled to the following remedy:

- a. Stop performing or accepting performance of the contracted work until the matter is resolved;

- b. Within a reasonable time of discovery of the defect or failure to perform, mail a written description of the defect or failure to the other party, and:
- 1) If the defect or failure to perform can be cured, demand specific remedial action within a reasonable time certain; or
 - 2) If the defect or failure to perform cannot be cured, specify any alternative performance which would be acceptable in lieu of the required performance and a time within which the alternative performance would be required; or
 - 3) If the defect or failure to perform cannot be cured and no reasonable alternative performance is acceptable, notify the other party of the termination of the Agreement as of a date certain and state therein whether an action for breach of Agreement will be brought.
 - 4) Where appropriate, obtain completion of the performance of the remaining balance of the Agreement with the original party.
- c. If the defect or failure to perform is not corrected or alternative performance completed within the time certain specified, the party alleging breach may initiate an action in the District Court of the Fourth Judicial District, Missoula County. If an action is brought, the prevailing party shall be entitled to attorney's fees as well as other costs of suit.

15. Income Tax Designation

In the event that the Internal Revenue Services should determine that Contractor is, according to IRS guidelines, an employee subject to withholding and social security contributions, Contractor shall acknowledge, as Contractor acknowledges herein, that all payments to Contractor are gross payments and Contractor is responsible for all income taxes and social security payments received prior to such IRS determination.

16. Indemnification

Contractor shall defend, indemnify and hold harmless the County, its employees and agents, from all claims, liabilities, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of Contractor, its employees or agents.

County shall defend, indemnify and hold harmless Contractor, its employees and agents, from all claims, liabilities, demands, causes of action or judgments, including costs and attorney fees, asserted by or awarded to third parties as a result of any negligent action or omission or willful misconduct of the County, its employees or agents.

17. Entire Agreement, Modifications and Non-Assignment

This Agreement contains the entire Agreement between the parties. All preliminary negotiations and Agreements are merged herein. This Agreement cannot be changed or modified in any manner except by a written Agreement signed by both parties.

No obligation or right hereunder may be assigned, transferred, subcontracted or otherwise given to or imposed on any other party in the absence of a written Agreement signed by both parties.

18. Compliance with Laws and Non-Discrimination

Contractor agrees to comply with all federal, state and local laws, rules and regulations. In accordance with §49-3-207 MCA, all hiring must be on the basis of merit and qualifications; and there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

19. Place of Performance and Venue

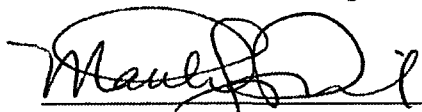
Contractor and County agree that performance of this Agreement is in Missoula County, Montana. In the event of litigation concerning it, venue is in the 4th Judicial District, in and for the County of Missoula, State of Montana. This Agreement will be construed under and governed by the laws of the State of Montana.

20. Severability

If any part of this Agreement is hereafter held to be void, illegal or unenforceable, the validity of the remaining portion or provisions will not be affected hereby.

DATED this 9TH day of FEBRUARY, 2016.

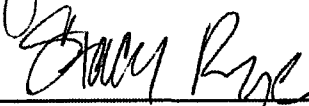
Contractor: River Design Group


Matt Daniels, P.E.

BOARD OF COUNTY COMMISSIONERS
Missoula County, Montana


Chair


Commissioner


Commissioner

ATTEST:


Clerk & Recorder

MISSOULA COUNTY PROFESSIONAL SERVICES AGREEMENT

Project: Smurfit Stone Remedial investigation Comments

Exhibit A – Scope of Services

Referenced to and made a part of the Professional Services Agreement between Missoula County and River Design Group, dated _____, 2016.

Under the terms of the Professional Services Agreement, River Design Group will provide consultation to the County regarding the former Smurfit-Stone mill site as follows:

- a. Contractor shall evaluate documents provided by the County and readily available from other sources related to the gravel dikes surrounding the former wastewater infiltration ponds and waste landfills at the former mill site. Contractor shall identify and recommend issues related to dike stability to be addressed in the remedial investigation. Contractor will provide written comments to be submitted to the U.S. Environmental Protection Agency, Montana Department of Environmental Quality and Montana Natural Resource Damage Program. This task should be completed by approximately March 11, 2016. This initial work is anticipated to require up to 30-40 hours to complete. Issues to be identified may include but not be limited to the following:
 - a. Geomorphic characteristics of the river and its tributaries in the area.
 - b. Stream channel migration
 - c. Floodplain constriction
 - d. Assessment of dike construction, repair and maintenance history
 - e. Recommended requirements for dike inspection and structural stability analysis
- b. Contractor will review results of the initial phase of investigation at the former mill site, expected to be available for review in March or April, 2016 and provide additional comments as requested by County.
- c. Contractor shall provide review and comments on additional topics as requested by County, through January 1, 2017. Topics that may be addressed, as requested by County, may include the following:
 - a. Evaluation of the floodplain based on higher resolution topographic mapping when completed for the site.
 - b. Impacts of the constricted floodway on upstream and downstream properties.
 - c. Flood storage lost as a result of floodplain constriction.
 - d. Recommended ongoing inspection and maintenance of dikes.
 - e. Interim repairs or maintenance of the dikes recommended by others.
 - f. Environmental risks and costs associated with maintaining dikes rather than removing them.
 - g. Opportunities for river and riparian restoration.